HON'BLE SRI JUSTICE G.CHANDRAIAH

&

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A.(sr).No. 3371 of 2014 and C.E.A.No. 106 of 2015

DATE: 21.08.2015

Between:

M/s.Sanjay Paper Packages .. Appellant

and

Commissioner of Customs,
Central Excise and Service Tax .. Respondent

_
_
_
_
_
_
COMMON ORDER:- (per Hon'ble Sri Justice Challa Kodanda Ram)

Inasmuch as the question of fact and law and the parties in these two appeals are one and the same, these matters are taken up together for disposal by this Common Order.

While C.E.A.(sr).No.3371 of 2014 is filed against the Misc. Order Nos.25625 – 25626 of 2013, dated 17.04.2013 and subsequent Misc. Order No. 26400, dated 09.07.2013, C.E.A.No. 106 of 2015 is directed against the Final Order No. 21485 of 2014, dated 21.08.2014 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zone, Bangalore (for brevity "CESTAT").

Being aggrieved by the Order-in-Original dated 13.01.2012 passed by the Joint Commissioner confirming the demand of Rs.11,70,317/- towards the duty liability as proposed in the Show Cause Notice dated 04.03.2011, the appellant filed an appeal before the appellate authority, and the Commissioner (Appeals), by Order-in-Appeal No.40/2012(G) CE, dated 12.09.2012, upheld the Original Order of the Joint Commissioner. Challenging the order of the appellate authority, the appellant preferred an appeal on 20.11.2012 before the CESTAT along with an application under Section 35(E) of the Central Excise Act, 1944 (for short "the Act") seeking waiver and stay of demand of excise duty of Rs.11,70,317/-, and the Tribunal, by Misc. Order dated 17.04.2013, while directing the appellant to pre-deposit a sum of Rs.10.00 lakhs pending disposal of the appeal, granted stay in respect of the balance due including penalties. Since this order was not served on the appellant, the Tribunal, by Misc. Order dated 09.07.2013, extended time up to 14.08.2013 for compliance with the conditional order. When the appellant filed an application seeking modification of the Stay order in respect of the pre-deposit, the Tribunal, by order dated 04.09.2013, while dismissing the application, extended time till 29.10.2013 for compliance, on which date, the matter was further adjourned to 27.02.2014 in view of a letter received from the appellant stating that they are proposing to engage another advocate. Subsequently, when the matter was called on 14.08.2014, another letter was received from the appellant indicating that on 13.08.2014, they filed C.E.A.(sr).No.3771 of 2014 before this Court challenging the Misc. Orders dated 17.04.2013 and 09.07.2013, as such, the matter was adjourned to 21.08.2014, on which date, the Tribunal, by Final Order No. 21485 of 2014, rejected the appeal for non-compliance with the provisions of Section 35F of the Act. Challenging the Final Order, the appellant has preferred C.E.A.No. 106 of 2015 before this Court.

Sri T.V.S.Prabhakara Rao, learned counsel for the appellant, has submitted that in spite of the best efforts, the appellant could not make pre-deposit of Rs.10.00 lakhs because of severe financial crunch. It is also submitted that against Rs.11,70,317/-, the levy of an unreasonable pre-deposit of Rs.10.00 lakhs defeats the very purpose of the appellant filing the appeal seeking to waive excise duty. He further submits that the condition of pre-deposit against the tax demand of Rs.11,70,317/- is onerous, and the financial hardship that would be caused in the process of running industrial concern is not considered by the Tribunal, as such, both the Central Excise Appeals deserve to be allowed.

On the other hand, Sri V. Gopalakrishna Gokhaley, learned Standing Counsel for Customs and Central Excise appearing for the respondent has submitted that in a case where appeal filed before the Tribunal is dismissed for non-compliance with the condition of pre-deposit, there arises no question of law that is required to be considered by this Court in exercise of its jurisdiction under Section 35G of the Act. He further submits that though the appellant had pleaded financial hardship, no material as such has been placed before the Court to substantiate their plea.

We have considered the rival submissions and perused the material placed on record.

A careful perusal of the impugned orders passed from time to time reveal that the aspect of financial stringency and the capacity of the appellant to make pre-deposit for a sum of Rs.10.00 lakhs against the tax liability of Rs.11,70,317/-, has not been really adverted to and considered by the Tribunal. However, the Tribunal was considerate enough to have extended grace period from to time. Whatever may be the situation seemed to be as on 17.04.2013 when an order of pre-deposit was made, sufficient time was granted to the appellant to comply with the same. Considering the fact that the appeal is a valuable right as provided under the statute, and in view of the submission made by the learned counsel for the appellant that if little more time is granted, they would comply with the condition of pre-deposit, and in the totality of the facts and circumstances of the case, we are inclined to dispose of the appeals with the following direction:

> "The appellant is directed to make payment of pre-deposit of Rs.10.00 lakhs (Rupees Ten Lakhs Only) within a period of four weeks from today. On such payment, the appeal said to have been preferred by the appellant before the CESTAT shall stand restored to its file and the same shall be disposed of in accordance with law. It is made clear that in the event the appellant fails to make the pre-deposit within the stipulated time and report compliance thereof before the Tribunal, the impugned Final Order dated 21.08.2014 stands confirmed without further reference to this Court."

With the above direction, the Central Excise Appeals are disposed of. No order as to costs.

As a sequel to the disposal of the appeals, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

21.08.2015

CHALLA KODANDA RAM,J

Note: Issue C.C. forthwith
b/o
bcj